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20 **UNITED STATES DISTRICT COURT**  
21 **NORTHERN DISTRICT OF CALIFORNIA**  
22 **OAKLAND DIVISION**

23 TAJE GILL, ESTERPHANIE ST. JUSTE, and  
24 BENJAMIN VALDEZ, individually and on  
25 behalf of all others similarly situated,

26 *Plaintiffs,*

27 v.

28 UBER TECHNOLOGIES, INC., a Delaware  
29 corporation, and LYFT, INC., a Delaware  
30 corporation,

31 *Defendants.*

32 Case No.: 4:22-cv-04379-JSW

33 **PLAINTIFFS' NOTICE OF MOTION  
34 AND MOTION TO REMAND AND  
35 MEMORANDUM OF POINTS AND  
36 AUTHORITIES**

37 **Date:** November 4, 2022

38 **Time:** 9:00am

39 **Location:** Courtroom 5 – 2nd Floor

40 **Judge:** Honorable Jeffrey S. White

**NOTICE OF MOTION AND STATEMENT OF REQUESTED RELIEF**

PLEASE TAKE NOTICE THAT, on November 4, 2022, at 9:00 am in Courtroom 5, 2<sup>nd</sup> Floor of the U.S. District Court for the Northern District of California, Oakland Division, at 1301 Clay St., Oakland, CA 94612, this Motion to Remand filed by Plaintiffs in the above-captioned action will be heard.

Plaintiffs respectfully request that the Court remand this case to San Francisco Superior Court because Defendant Uber, Inc.’s Notice of Removal fails to establish the existence of a federal question imparting federal subject matter jurisdiction. Plaintiffs’ Motion is based on this Notice of Motion and the supporting Memorandum of Points and Authorities.

Dated: August 29, 2022

Respectfully submitted,

**TAJE GILL, ESTERPHANIE ST. JUSTE, and  
BENJAMIN VALDEZ, individually and on behalf of  
all others similarly situated,**

By: /s/ Yaman Salahi  
One of Plaintiffs' Attorneys

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## I. INTRODUCTION

2 In this action, three California-resident rideshare drivers sued two California-based  
3 ridesharing companies in California state court to obtain redress for violations of California's  
4 antitrust and other business practice statutes, including damages that they suffered while driving in  
5 California and an injunction to stop further violations of California law. Defendant Uber, with  
6 Defendant Lyft's consent, removed the case to federal court, arguing that Plaintiffs' six state-law  
7 claims contain hidden federal claims so substantial that they transform this case into one arising  
8 under federal law. They do not. When Plaintiffs said that they were bringing claims under  
9 California law, they meant it. Neither the Court nor Defendants can rewrite Plaintiffs' complaint to  
10 include federal claims that Plaintiffs do not wish to pursue. *Cf. Schumacher v. J.R. Simplot Co.*, No.  
11 6:21-CV-00489-MC, 2021 WL 3604836, at \*4 (D. Or. Aug. 13, 2021) ("When it walks like a duck  
12 and quacks like a duck, calling it a zebra does not change the fact that it's a duck."). Because this  
13 case raises no federal questions, the Court lacks subject-matter jurisdiction and is required to  
14 remand to state court.

## II. FACTUAL AND PROCEDURAL BACKGROUND

16 Defendants Uber and Lyft are a duopoly that controls the app-based ride hailing industry  
17 that has largely replaced traditional taxis in California. (Complaint ¶ 1.) Plaintiffs are current and  
18 former drivers who used the companies' apps to pick up passengers and collect fares. (*Id.* ¶¶ 118-  
19 145.) They allege that Uber and Lyft forced them to enter into coercive and unfair agreements that  
20 permit Uber and Lyft to fix the prices for rides, to withhold key information from them (such as  
21 where the drivers are actually agreeing to go when they accept a ride), and to adopt non-linear  
22 payment structures and minimum acceptance rates that are designed to limit drivers' mobility  
23 between rideshare platforms and suppress competition for the drivers' services. (*Id.* ¶¶ 33-35, 78-  
24 86, 154, 161-63.) In addition, Uber and Lyft use opaque algorithms to make secret payments to  
25 drivers that commit to working for them. (*Id.* ¶¶ 72-75.)

26 To obtain redress for these unfair and anticompetitive practices, Plaintiffs filed a six-count  
27 complaint in the Superior Court of California, County of San Francisco. Counts one and two were  
28 brought under the Cartwright Act, Cal. Bus. & Prof. Code §§ 16720, *et seq.*, which is California's

1 antitrust statute, challenging price-fixing and other anticompetitive practices imposed through  
 2 vertical agreements between Uber/Lyft and their drivers. Count three alleges a violation of the  
 3 Unfair Practices Act, Cal. Bus. & Prof. Code § 17045, which prohibits secret payments to destroy  
 4 competition. The final three counts allege violations of each of the three prongs of California's  
 5 Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200, *et seq.*: unlawful conduct that  
 6 violates the Cartwright Act, unfair conduct that violates the public policy of the State of California,  
 7 and fraudulent conduct that deceives drivers. Plaintiffs plead no federal causes of action, and do not  
 8 allege any theory of recovery under state law that turns on an alleged violation of federal law.

9 Defendants have removed this action to federal court on the claim that the case arises under  
 10 the Sherman Act, 15 U.S.C. § 2, which is the federal antitrust statute. According to them,  
 11 California's Cartwright Act does not provide a remedy for the conduct alleged in the complaint.  
 12 (Dkt. 1 ¶ 13.) Based on that premise, they conclude that Plaintiffs' six state-law counts must  
 13 secretly be claims under the federal Sherman Act—which they contend criminalizes their alleged  
 14 conduct—and ask the Court to exercise federal question jurisdiction. Because they do not bring any  
 15 claim that turns on a question of federal law, Plaintiffs now seek remand as required by 28 U.S.C.  
 16 § 1447(c).

### 17 III. ARGUMENT

18 As the party invoking federal jurisdiction, “[t]he removing defendant bears the burden of  
 19 overcoming the strong presumption against removal jurisdiction.” *Hansen v. Grp. Health Coop.*,  
 20 902 F.3d 1051, 1057 (9th Cir. 2018) (internal quotation marks omitted). “Federal jurisdiction must  
 21 be rejected if there is any doubt as to the right of removal in the first instance.” *Marquez v. DSW  
 22 Shoe Warehouse, Inc.*, No. 20-CV-07759-JSW, 2021 WL 6200337, at \*1 (N.D. Cal. Mar. 12, 2021)  
 23 (White, J.) (quoting *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992)). Doubts about  
 24 removability should be resolved in favor of remand because of the “strong presumption against  
 25 removal.” *Gaus*, 980 F.2d at 566; *see also Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d  
 26 1089, 1090 (9th Cir. 2003).

27 Defendants here have not met that burden. They allege federal jurisdiction solely under 28  
 28 U.S.C. § 1441(a), which provides for jurisdiction over cases arising under federal law. As a general

1 matter, § 1441 extends only to cases where a federal claim appears on the face of the complaint,  
 2 which is not the case here. While exceptions to this rule exist, they are extremely limited, extending  
 3 only to areas where federal law has occupied an entire subject area or a very small number of cases  
 4 where a substantial and disputed federal question is legitimately and necessarily raised by a state  
 5 law claim in a manner that requires a federal court to exercise jurisdiction. Because Defendants  
 6 have not met their burden to demonstrate that this case cannot be resolved solely by reference to  
 7 California law, federal subject-matter jurisdiction is lacking. Remand to state court is required.

8       **A.     No Federal Question Appears on the Face of the Complaint**

9       “In general, removal based on federal question jurisdiction is improper unless a federal  
 10 claim appears on the face of a well-pleaded complaint.” *Redwood Theatres, Inc. v. Festival*  
 11 *Enterprises, Inc.*, 908 F.2d 477, 479 (9th Cir. 1990); *accord City of Oakland v. BP PLC*, 969 F.3d  
 12 895, 903 (9th Cir. 2020). “Therefore, as the ‘master of the claim,’ the plaintiff can generally ‘avoid  
 13 federal jurisdiction by exclusive reliance on state law.’” *City of Oakland*, 969 F.3d at 904 (quoting  
 14 *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987)).

15       Here, Defendants concede that “Plaintiffs label their causes of action as state law claims[.]”  
 16 (Dkt. 1 at 3.) Plaintiffs labeled their causes of action as state law claims because their causes of  
 17 action are state law claims. Each claim is brought under a California statute, and Plaintiffs very  
 18 clearly limited those claims that may depend on violations of other statutes, such as their Unfair  
 19 Competition Law claims, to violations of *state* law. (*Compare* Complaint ¶ 177 (“Defendants’  
 20 conduct is unlawful because it violates California’s Cartwright Act, Bus. & Profs. Code § 16720, *et*  
 21 *seq.*, and Bus. & Prof. Code § 17045, as set forth in this complaint.”) *with Nat'l Credit Reporting*  
 22 *Ass'n, Inc. v. Experian Info. Sols., Inc.*, No. 04-cv-01661 WHA, 2004 WL 1888769, at \*3 (N.D.  
 23 Cal. July 21, 2004) (“Plaintiff has alleged that ‘[d]efendants’ wrongful conduct described above (i)  
 24 violate[d] state *and* federal antitrust laws’ . . . . As the master of its complaint, plaintiff could have  
 25 avoided any issue of federal question and, instead, could have simply borrowed state antitrust laws.  
 26 But it did not.”).)

27       In fact, federal law is mentioned exactly one time in Plaintiffs’ complaint, in an allegation  
 28 that describes an admission by Uber in an unrelated arbitration. (Complaint ¶ 35.) That does not

1 transform this into a federal case. Because there is no federal question on the face of the complaint,  
 2 removal is presumptively improper, and the case should be remanded.

3       **B.       No Exception to the Well-Pleaded Complaint Rule Permits the Court to**  
 4       **Exercise Federal Question Jurisdiction over this State Law Case.**

5       There are several exceptions to the well-pleaded complaint rule, some of which Defendants  
 6 appear to raise in their removal papers. To be clear, Plaintiffs have no obligation to demonstrate to  
 7 the Court that this case falls outside those exceptions. *See Hansen*, 902 F.3d at 1057. Rather, it is  
 8 Defendants' burden to show that one applies. Nevertheless, for the sake of completeness, Plaintiffs  
 9 explain below why neither the "artful pleading doctrine" nor the exception for state-law claims that  
 10 arise under federal law permits the Court to exercise jurisdiction over this action.

11       **1.       The Artful Pleading Doctrine Does Not Apply.**

12       Defendants first attempt to rely on what they term the "artful pleading doctrine." (Dkt. 1 at  
 13 3.) However, that doctrine only applies when "a federal statute's preemptive force is so  
 14 extraordinary that it converts an ordinary state common-law complaint into one stating a federal  
 15 claim for purposes of the well-pleaded complaint rule." *Cty. of San Mateo v. Chevron Corp.*, 32  
 16 F.4th 733, 748 (9th Cir. 2022) (internal quotation marks omitted). "The Supreme Court has  
 17 recognized only three statutes for which complete preemption applies," and the Sherman Act is not  
 18 one of them. *Id.* To the contrary, "federal antitrust laws do not pre-empt state law," *California v.*  
 19 *ARC Am. Corp.*, 490 U.S. 93, 102 (1989), and antitrust claims under the Cartwright Act do not  
 20 permit removal under the artful pleading doctrine. *Redwood Theatres*, 908 F.2d at 480.  
 21 Accordingly, that doctrine cannot apply here.

22       **2.       Plaintiffs' State Law Claims Were Not Brought Under Federal Law.**

23       Separately from the artful pleading doctrine, there is one more "special and small category  
 24 of state-law claims that arise under federal law for purposes of § 1331 because federal law is a  
 25 necessary element of the claim for relief." *City of Oakland*, 969 F.3d at 904 (internal quotation  
 26 marks omitted). These are cases where "a federal issue is: (1) necessarily raised, (2) actually  
 27 disputed, (3) substantial, and (4) capable of resolution in federal court without disrupting the  
 28 federal-state balance approved by Congress.'" *San Mateo*, 32 F.4th at 746 (quoting *Gunn v. Minton*,

1 568 U.S. 251, 258 (2013)). “Only a few cases have ever fallen into this narrow category.” *Id.*  
 2 (internal quotation marks omitted). To meet their burden to justify the exercise of federal  
 3 jurisdiction, Defendants will need to demonstrate that this case satisfies all four of these factors.  
 4 Because this case raises no federal issue at all, it meets none of them.

5 The main thrust of Defendants’ argument is that the Cartwright Act does not permit  
 6 recovery for the conduct Plaintiffs are alleging. According to Defendants, that means even though  
 7 Plaintiffs have expressly pleaded two claims under California’s Cartwright Act and a UCL claim  
 8 premised solely on violations of the Cartwright Act, their claims are *really* secret federal Sherman  
 9 Act claims. That’s nonsense. It is black-letter law that “jurisdiction may not be sustained on a  
 10 theory that the plaintiff has not advanced.” *Balser v. Dep’t of Just., Off. of U.S. Tr.*, 327 F.3d 903,  
 11 908 (9th Cir. 2003) (quoting *Merrell Dow Pharms. Inc. v. Thompson*, 478 U.S. 804, 810 n.6  
 12 (1986)). Federal jurisdiction depends on the legal theory that the plaintiff is actually advancing, not  
 13 the legal theory Defendants wish the plaintiffs would advance. *See Pan Am. Petroleum Corp. v.*  
 14 *Superior Ct. of Del. In & For New Castle Cty.*, 366 U.S. 656, 662 (1961) (“[Q]uestions of exclusive  
 15 federal jurisdiction and ouster of jurisdiction of state courts are, under existing jurisdictional  
 16 legislation, not determined by ultimate substantive issues of federal law. The answers depend on the  
 17 particular claims a suitor makes in a state court—on how he casts his action.”).

18 Regardless of whether Defendants can imagine ways that they have violated federal law,  
 19 *see* 15 U.S.C. § 2, Plaintiffs do not even come close to necessarily relying on federal law in any  
 20 portion of their complaint. Plaintiffs plainly state that they are suing the Defendants under the  
 21 Cartwright Act and other California statutes (some of which rely on the Cartwright Act, others of  
 22 which do not). Without an actual federal claim to point to, Defendants’ removal papers list a  
 23 number of allegations that they argue “reflect the unilateral—and thus federal—character of  
 24 [Plaintiffs’] claims.” (Dkt. 1 ¶ 17.) In fact, Plaintiffs’ antitrust claims are not premised on  
 25 “unilateral” conduct. They are premised on vertical agreements to fix prices and restrain trade  
 26 through anticompetitive practices like minimum acceptance rates and non-linear pricing structures  
 27 that are designed to limit the ability of drivers to switch between rideshare platforms, and thus  
 28 suppressing competition for their services. (Complaint ¶¶ 154-55, 160-63.)

1       But the Court need not get into the details of antitrust law here, because even if Plaintiffs  
 2 had alleged solely unilateral conduct in their complaint, federal jurisdiction would not automatically  
 3 follow. A federal court can't exercise jurisdiction just because some allegations *feel* like they could  
 4 be federal in character. *See Lippitt v. Raymond James Fin. Servs., Inc.*, 340 F.3d 1033, 1043-44 (9th  
 5 Cir. 2003) (holding that claims for an unfair or fraudulent business practice under California's UCL  
 6 do not confer federal jurisdiction, even if the UCL's goals "comport with the broader regulatory  
 7 goals" of a federal regime, and even if the plaintiff's "complaint reads somewhat like" a matter  
 8 covered by a federal statute or regulation). Federal law has to be *necessarily* implicated.  
 9 Accordingly, "[w]hen a claim can be supported by alternative and independent theories—one of  
 10 which is a state law theory and one of which is a federal law theory—federal question jurisdiction  
 11 does not attach because federal law is not a necessary element of the claim." *Rains v. Criterion Sys., Inc.*, 80 F.3d 339, 346 (9th Cir. 1996); *accord Lippitt*, 340 F.3d at 1043; *see also Aguayo v. Wachovia*, No. 10-cv-01178-JSW, 2010 WL 1221810, at \*3 (N.D. Cal. Mar. 24, 2010) (White, J.)  
 12 (granting motion to remand because "it is not evident that [plaintiff's] claim to rescind the loan  
 13 agreement is premised on [the federal] TILA, rather than under general provisions of California  
 14 law"). Here, Plaintiffs have only plead a state law claim, but even if an alternate federal law theory  
 15 of recovery could be read into the complaint, federal question jurisdiction would not attach because  
 16 such a theory of recovery is not being advanced by Plaintiffs and is unnecessary to their claims.  
 17

18       If Defendants are right that Plaintiffs have no claim under the Cartwright Act, Plaintiffs'  
 19 claims will not spontaneously morph into Sherman Act claims. Rather, as the Ninth Circuit has  
 20 explained, Plaintiffs would simply lose on the merits under state law. *See Dimidowich v. Bell &*  
 21 *Howell*, 803 F.2d 1473, 1478 (9th Cir. 1986) ("Dimidowich's complaint did not allege a violation of  
 22 the Sherman Act, section 2. 15 U.S.C. § 2 (1982). Since Dimidowich's monopoly arguments fail to  
 23 state a cognizable claim under California law, and since California law is all he pleaded, we affirm  
 24 the district court's dismissal of his monopolization and attempted monopolization claims.")  
 25 (diversity jurisdiction). And if Plaintiffs lose on the merits, they can then appeal, and California  
 26 courts can decide what California law means. There is also no danger that hidden federal claims will  
 27 spring forth after remand, because Plaintiffs will be judicially estopped from making them. *See*  
 28

1 *Lippitt*, at 340 F.3d at 1046 (noting that judicial estoppel prevents a party from taking inconsistent  
 2 positions within the same litigation).

3 Defendants' argument is really one that goes to the merits of Plaintiffs' Cartwright Act  
 4 claims, not the existence of a federal question. That means the remand analysis should stop here.  
 5 There is no reason to consider whether Plaintiffs' complaint will "survive in state court a demurrer  
 6 or motion on the pleadings[.]" *Id.* at 1043 (declining to express an opinion on that matter). Indeed,  
 7 the Court has no power to do so. *Guthrie v. Transamerica Life Ins. Co.*, 561 F. Supp. 3d 869, 873  
 8 (N.D. Cal. 2021) ("The boundaries of subject matter jurisdiction are unshakeable and unwaivable; a  
 9 federal court may not pass on the merits of a suit unless it has assured itself of subject matter  
 10 jurisdiction."). Remand of Plaintiffs' state-law claims is the only option permitted by 28 U.S.C.  
 11 § 1447(c).

12       3.       **District Court Decisions that Permit Federal Question Jurisdiction Over**  
 13       **State Law Antitrust Claims Are Inapplicable or Incorrect.**

14       Nevertheless, Defendants point out that courts in this district have exercised federal question  
 15 jurisdiction over what appear to be antitrust-related state-law claims. These cases are all either  
 16 distinguishable or mistaken. Binding authority requires remand.

17       In most of the cases cited by Defendants, the plaintiffs derived their state law claims "from  
 18 violation of federal law" and specifically invoked it. *PeopleBrowsr, Inc. v. Twitter, Inc.*, No. C-12-  
 19 6120-EMC, 2013 WL 843032, at \*3 (N.D. Cal. Mar. 6, 2013); *see also Nat'l Credit Reporting*  
 20 *Ass'n*, 2004 WL 1888769, at \*4 ("The complaint alleged unlawful business practices which rested  
 21 on federal law."); *Rosenman v. Facebook Inc.*, No. 21-CV-02108-LHK, 2021 WL 3829549, at \*5  
 22 (N.D. Cal. Aug. 27, 2021) ("Plaintiff does not allege in her Complaint that Facebook's conduct  
 23 violated California-specific constitutional, statutory, or regulatory provisions."); *Cent. Valley Med.*  
 24 *Grp., Inc. v. Indep. Physician Assocs. Med. Grp., Inc.*, No. 19-CV-00404-LJO-SKO, 2019 WL  
 25 2491328, at \*3 (E.D. Cal. June 14, 2019) (denying remand without prejudice where Plaintiff alleged  
 26 that "Defendant's conduct . . . offends the policies of free competition and free trade and commerce  
 27 set forth in, *inter alia*, the federal Sherman Act, Clayton Act, Federal Trade Commission Act").  
 28 Plaintiffs here do not do anything like that. Every one of their claims is clearly and expressly

1 premised solely on violations of California law. The Court can safely disregard these inapposite  
 2 cases.

3 Defendants identify one case, *In re: Nat'l Football Leagues Sunday Ticket Antitrust Litig.*,  
 4 No. 15-cv-09996-BRO-JEMX, 2016 WL 1192642 (C.D. Cal. Mar. 28, 2016), that appears to find a  
 5 federal question even where the plaintiff wasn't relying on federal law. That case ignores the basic  
 6 principle that a plaintiff is permitted to decide how to advance her own case and is therefore  
 7 wrongly decided. Specifically, *Sunday Ticket* assumes that because monopolistic conduct is  
 8 regulated by the Sherman Act, all complaints that allege monopolistic conduct must also  
 9 automatically be alleging violations of the Sherman Act. *See id.* at \*4, 5. The court refused to  
 10 consider whether the conduct alleged might also violate state law, instead concluding that the  
 11 plaintiff couldn't state a violation of state law if the court "disregarded" any allegation that referred  
 12 to or suggested conduct that would be regulated under the Sherman Act. *See id.* at \*5.

13 However, several months after *Sunday Ticket* was decided, the Supreme Court rejected this  
 14 line of reasoning in the context of securities law—another area in which there is a statute with  
 15 exclusive federal jurisdiction that does not preempt state statutes on the same subject. *See Merrill*  
 16 *Lynch, Pierce, Fenner & Smith Inc. v. Manning*, 578 U.S. 374, 391 (2016); *see also ARC Am.*  
 17 *Corp.*, 490 U.S. at 102 ("Congress intended the federal antitrust laws to supplement, not displace,  
 18 state antitrust remedies."). The Supreme Court considered and rejected a rule that would extend  
 19 federal question jurisdiction to "any complaint that happens to mention a duty established by"  
 20 federal law. *Merrill Lynch*, 578 U.S. at 381. Such a rule would be an unwarranted expansion of  
 21 federal jurisdiction, not to mention ignore the reality that conduct that violates federal law will often  
 22 also be unfair, unconscionable, or otherwise illegal under state law. *See id.* at 391–92 ("[I]t is hardly  
 23 surprising in a suit like this one, alleging short sales in violation of *state* securities law, that a  
 24 plaintiff might say the defendant previously breached a *federal* prohibition of similar conduct. . . .  
 25 And it is less troubling for a state court to consider such an issue than to lose all ability to adjudicate  
 26 a suit raising only state-law causes of action."). To the extent *Sunday Ticket*—or any other case—  
 27 suggests that federal courts can assert jurisdiction merely because a complaint asserts a state law  
 28 cause of action that could also happen to establish a violation of federal law despite the plaintiffs'

1 decision not to press such an argument, it is overruled by the Supreme Court’s later decision in  
 2 *Merrill Lynch*.

3 Defendants also rely on *Rosenman v. Facebook Inc.*, No. 21-cv-02108-LHK, 2021 WL  
 4 3829549 (N.D. Cal. Aug. 27, 2021). The plaintiffs there had brought a cause of action under the  
 5 UCL’s unfairness prong, and the court characterized it as one for abuse of monopoly position. *Id.* at  
 6 \*5. Based on that alone, the court held that “alleged unilateral monopolistic conduct is only  
 7 actionable under Section 2 of the Sherman Act,” and so therefore determined that the UCL claim  
 8 “necessarily raises a federal issue.” *Id.* The *Rosenman* court’s reasoning relies almost entirely on  
 9 *Sunday Ticket*, which, as explained above, is incompatible with the Supreme Court’s later decision  
 10 in *Merrill Lynch*. *See id.* at \*4 (citing *Sunday Ticket* without any citation to *Merrill Lynch*). Even  
 11 without *Merrill Lynch*, though, *Rosenman*’s reasoning and analysis are wrong. As noted above,  
 12 Plaintiffs here do not bring a monopolization claim, nor do they premise their antitrust claims on  
 13 unilateral conduct—they are challenging aspects of the vertical agreement between Uber/Lyft and  
 14 their drivers. *See* Section III.B.2, *supra*.

15 But if the Court has doubts as to whose characterization of the claims is correct—or even if  
 16 the Court believes that Defendants’ characterization is right—remand would still be required  
 17 because Plaintiffs could press the claim under state law. “Out of respect for state courts, [the  
 18 Supreme] Court has time and again declined to construe federal jurisdictional statutes more  
 19 expansively than their language, most fairly read, requires. [The Court] ha[s] reiterated the need to  
 20 give due regard to the rightful independence of state governments—and more particularly, to the  
 21 power of the States to provide for the determination of controversies in their courts.” *Merrill Lynch*,  
 22 578 U.S. at 389 (cleaned up). Relevant here, the California Supreme Court has never directly  
 23 addressed what type of conduct is considered unilateral for the purpose of the Cartwright Act, and  
 24 there is disagreement among the intermediate courts. *See, e.g., Freeman v. San Diego Ass’n of  
 25 Realtors*, 77 Cal. App. 4th 171, 201 (1999) (expressly disagreeing with another district’s analysis of  
 26 whether arguably unilateral conduct was actionable under Cartwright Act); *Dimidowich*, 803 F.2d at  
 27 1478 (relying solely on intermediate appellate court decisions). One 35-year-old Ninth Circuit  
 28 decision that makes an *Erie* guess as to how California law applies in a single case does not provide

1 a basis to automatically federalize every future action that even arguably raises a similar issue. See  
 2 Dkt. 1 ¶ 13 (citing *Dimidowich*).

3 In addition, Defendants and the *Rosenman/Sunday Ticket* courts all fail to recognize that  
 4 California common law includes a separate prohibition against unilateral acts of monopolization.  
 5 See, e.g., *In re Cipro Cases I & II*, 61 Cal. 4th 116, 163 (2015) (reversing grant of summary  
 6 judgment for defendants, including on common law monopolization); *In re Cipro Cases I & II*, 121  
 7 Cal. App. 4th 402, 407 (2004) (affirming grant of class certification, including for “common law  
 8 tort of monopolization”); see also *Burdell v. Grandi*, 152 Cal. 376, 383 (1907) (holding that  
 9 monopolization and attempted monopolization are void as against public policy under the common  
 10 law); *Exxon Corp. v. Sup. Ct.*, 51 Cal. App. 4th 1672, 1687 (1997) (discussing “business tort” of  
 11 monopolization). Unilateral acts of monopolization may also be unlawful under the UCL’s  
 12 “unfairness” prong—again without reference to any federal law or duty—because they are  
 13 “immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers.” *Morgan v.*  
 14 *AT&T Wireless Servs., Inc.*, 177 Cal. App. 4th 1235, 1254 (2009). And again, if the Court is not  
 15 certain as to whether a state law theory can support Plaintiffs’ claim, then that doubt is resolved in  
 16 favor of remand. See *Lippitt*, 340 F.3d at 1043; *Gaus*, 980 F.2d at 566.<sup>1</sup>

17 That is why another court in this district recently ordered the remand of a UCL unfairness  
 18 claim premised on alleged monopolization, parting ways with the courts in *Rosenman* and *Sunday*  
 19 *Ticket*. In *Molina Healthcare, Inc. v. Celgene Corp.*, No. 21-cv-05483-JCS, 2022 WL 161894, at  
 20 \*10 (N.D. Cal. Jan. 18, 2022), the court explained that remand was required because the plaintiff  
 21 “could potentially prevail by showing that [the defendant]’s alleged monopolization or attempted  
 22 monopolization” was “unfair” under the UCL. There, like here, the plaintiff had “not specifically  
 23 asserted a violation of the Sherman Act as the basis for its UCL claims.” *Id.* at \*11. The *Molina*  
 24 court acknowledged that such monopolization, if it violated the UCL, “would likely also violate the  
 25 Sherman Act. But so what? A court would not inevitably need to address that question in order to

26 <sup>1</sup> Because some state trial and federal district courts have not recognized common law  
 27 monopolization claims under California law, there are conflicting decisions among the lower courts.  
 28 See, e.g., Kathleen Foote & John F. Cove, Jr., *Common Law Monopolization Under California Law*,  
 Cal. Anti. & Unfair Comp. L. § 6.04 (summarizing conflicting rulings among lower courts).  
 California courts should be permitted to resolve these conflicts.

1 consider whether the conduct is ‘immoral, unethical, oppressive, unscrupulous or substantially  
 2 injurious to consumers,’ or ‘whether the practice’s impact on the victim outweighs the reasons,  
 3 justifications, and motives of the alleged wrongdoer,’” within the meaning of the UCL. *Id.* (quoting  
 4 *Doe v. CVS Pharmacy, Inc.*, 982 F.3d 1204, 1214-15 (9th. Cir. 2020)).

5 That reasoning applies with equal force here. Plaintiffs’ state law claims do not *necessarily*  
 6 turn on any question of federal law. Thus, Defendants cannot show “as a matter of law that  
 7 [Plaintiffs’] state-law claims [under the Cartwright Act and UCL] *necessarily* raise federal issues.”  
 8 *City of Livingston v. Dow Chem., Co.*, No. 05-cv-03262-JSW, 2005 WL 2463916, at \*3 (N.D. Cal.  
 9 Oct. 5, 2005) (White, J.) (ordering remand). The requirements for federal jurisdiction are not  
 10 present.

11 **IV. CONCLUSION**

12 The Court should remand this action to the Superior Court of California, County of San  
 13 Francisco.

14 Dated: August 29, 2022

15 Respectfully submitted,

16 **TAJE GILL, ESTERPHANIE ST. JUSTE, and**  
**BENJAMIN VALDEZ**, individually and on behalf of  
 17 all others similarly situated,

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